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12 Antonio J. Gracias, James Murdoch, Kimbal  
Musk, and Linda Johnson Rice  
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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 Case No.: 3:18-cv-04865-EMC  
18  
19 IN RE TESLA, INC. SECURITIES  
LITIGATION  
20

**[PROPOSED] ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS CONSOLIDATED  
COMPLAINT**

21 Date: March 5, 2020  
22 Time: 1:30 p.m.  
23 Dept.: Courtroom 5, 17th Floor  
24 Judge: Hon. Edward M. Chen

25 Date Action Filed: August 10, 2018  
26  
27  
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1                   The motion of Tesla, Inc. (“Tesla”), Elon Musk (“Mr. Musk”), Brad W. Buss, Robyn  
 2 Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson  
 3 Rice (the “Director Defendants”) (collectively with Tesla and Mr. Musk, “defendants”) to dismiss  
 4 plaintiff’s Consolidated Complaint for Violations of the Federal Securities Laws (the “CC”) came  
 5 on regularly for hearing before the Court on March 5, 2020. The parties were represented by their  
 6 respective counsel of record.

7                   After considering the papers submitted by the parties and the argument of counsel, the  
 8 Court finds that plaintiff does not satisfy the requirements of Fed. R. Civ. P. 9(b) and the Private  
 9 Securities Litigation Reform Act of 1995 (“PSLRA”), and has not alleged facts sufficient to state  
 10 a claim for violation of Section 10(b) of the Securities Exchange Act of 1934 (“1934 Act”) or  
 11 Section 20(a) of the 1934 Act. The Court holds that:

- 12                   1. Plaintiff fails to allege specific, contemporaneous facts showing that any challenged  
 13 statement by Mr. Musk in August 2018 was false, misleading, or otherwise actionable;
- 14                   2. Plaintiff fails to plead particularized facts raising the strong, cogent and compelling  
 15 inference of scienter the law demands, and viewed holistically, the facts and  
 16 circumstances weigh against any inference of scienter;
- 17                   3. Plaintiff fails to allege facts showing that Tesla made any of the allegedly actionable  
 18 statements or acted with scienter;
- 19                   4. Plaintiff fails to allege loss causation in the absence of any disclosure that was  
 20 corrective of an alleged misstatement; and
- 21                   5. Plaintiff’s claim for control person liability under Section 20(a) fails to state a claim  
 22 because plaintiff fails to plead a primary violation of Section 10(b), fails to plead any  
 23 corporate action, and fails to plead facts showing that the Director Defendants had or  
 24 exercised control over any allegedly actionable statement.

25                   While leave to amend is liberally granted, this is not a case where the defects can be cured  
 26 by more pleading. Thus, it is HEREBY ORDERED that Defendants’ motion to dismiss is  
 27 GRANTED and the Consolidated Complaint is DISMISSED WITH PREJUDICE.

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1 **IT IS SO ORDERED.**

2 Dated: \_\_\_\_\_

3 The Honorable Edward M. Chen  
4 United States District Judge

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